IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 466 OF 2006.
WITH
CIVIL APPLICATION NO. 572 OF 2006.

AND

APPEAL FROM ORDER NO. 471 OF 2006.
WITH
CIVIL APPLICATION NO. 584 OF 2006.

Biharilal Wadhwa ..Appellant.
vs.
Suresh Enterprises & ors. ..Respondents.

Ms. Rajani Iyer with Mr. K.D. Shah o/b Kumud A. Bhatia for the appellant.

Mr. B.D. Joshi for respondent No.1.

Mr. U.J. Makhija and Amit Shroff for respondent Nos. 2 t 4.

CORAM : A.M. KHANWILKAR, J.
DATED : 3.8.2006.

P.C. :

. Heard Counsel for the parties.

2. Perused the documents on record, particularly, the development agreement between the defendants inter-se dated 22nd December 1987; consent terms arrived at in the suit between the defendants inter-se dated 15th January 2001, as well as the registered agreement executed in favour of the appellant-plaintiff dated 26th September 2001, including the correspondence exchanged between the parties which was relied upon during the course of arguments.

3. After going through the documents on record, I have no hesitation in holding that the finding recorded by the Court below on the point in issue is a possible view. At this interlocutory stage, as the view taken by the trial Court is accepted, I see no reason to interfere with the decision of the Court below. These appeals should, therefore, fail.

4. Counsel for the appellant, however, contends that the appellant has no concern with the dispute pending between the defendants inter-se. On account of the said dispute appellant should not be made to suffer. The argument seems to be attractive. However, I am in agreement with the observations made in para 13 and 14 of the impugned judgment that having regard to the documents exchanged between the plaintiff and defendant No.1 and stand now taken, itself indicates that the agreement with respect to flat Nos. 701 and 901 may be on account of collusion between them. The respondent is justified in relying upon the terms of the consent terms which clearly indicate that the flats which were to be constructed are specified as 1110 sq.fts. Interestingly, the agreement in question pertaining to suit flats refer to area of the flats as 777 sq.fts. But, in the legal notice sent on behalf of the plaintiff to the owners claim was sought to be made in respect of flat measuring 1110 sq.ft. Be

that as it may, the trial Court has rightly recorded the finding that defendant No.1 had no authority to execute the agreement in respect of the suit flats without joining defendant Nos.2 to 5 as party to such agreement. Even the finding of the trial Court on the issue that defendant No.1 was permitted to develop the property only upto 6th floor in terms of the development agreement is a possible view. Indeed, defendant No.1 could have developed even above 6th floor, in terms of the consent terms, but subject to complying with the terms specified therein. Taking overall view of the matter, it is not possible to interfere with the conclusions reached by the trial Court that no prima facie case is made by the appellant.

5. I shall now refer to the arguments advanced on behalf of defendant No.1. The main contention of defendant No.1 was that on reading of Clause Nos. 13, 21,22,24 and 26 of the consent terms, it is not possible to sustain the view taken by the trial Court, that defendant No.1 had no authority to execute the agreement in respect of flat No.701 and 901 respectively. The reliance placed on these clauses, in my opinion, do not contain express provision for nullifying or modifying the terms specified in the original development agreement. Clause 3 therein expressly provides that to the

agreement of sale of flat which was given to defendant No.1 and other persons on ownership basis, the defendant No.1 shall join the owner as party to the agreement to be executed with the proposed buyer. This condition is not complied. Necessarily, the agreements regarding the suit flats cannot bind the owner. Suffice it to observe that the view taken by the Court below is a possible view and it does not call for interference in this appeal at this interlocutory stage.

6. Appeals are, therefore, dismissed.

7. It is made clear that the observations made in the judgment of the trial Court and in the present order are only for the purpose of considering prima facie case, to address issue of grant or non-grant of interim relief. The trial Court shall not be influenced by any of these observations and shall decide the suit pending between the parties on its own merits in accordance with law.

8. At this stage, Counsel for the appellant prays that the parties be directed to maintain status-quo with respect to suit property for a reasonable period, so as to enable the appellant to take up the matter in appeal, if so advised. The

requests being reasonable, though opposed by respondent Nos. 2 to 5, the same is accepted. Parties are directed to maintain status-quo with respect to suit flat for a period of 4 weeks from today.

9. In view of the disposal of these appeals, civil applications do not survive. The same stand disposed of.

(A.M. KHANWILKAR,J.)